IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9208 OF 2004

Kamlabai Gopaldas Shah ..Petitioner.

Versus

The Collector of Pune & Ors. ..Respondents.

Mrs. Veena B. Thadhani for the Petitioner.

Mr.A.H. Palekar, AGP for the Respondent No.4-State.

CORAM : S. A. BOBDE, J.

DATED : 05TH AUGUST, 2005.

P.C.:

1. Rule, returnable forthwith.

. Mr. Palekar, AGP waives service of rule for the Respondent No.4 -State.

. Heard by consent.

2. The petitioner has challenged the order in revision passed under section 138 of the Bombay Prohibition Act, 1949. By the impugned order, the Minister has rejected the petitioner’s revision on the

ground that the petitioner failed to produce original documents as evidence of FL II licence having been granted to the petitioner's husband Gopaldas Shah. The petitioner has only produced one photo copy of the letter of the Government, not bearing the signature of any Government Officer, in which it was mentioned that a FL II licence had been granted to Gopaldas Vithaldas Shah i.e. the petitioner's husband. The Minister has disbelieved this photo copy. The other reason why the Minister has held that the order dated 26.07.1999, by which the FL II licence was revalidated, is the fact that the then Commissioner (State Excise) Mr. Ashok Lal did not have any power to revalidate such licence. The petitioner had relied on the revalidation made by the said Commissioner. In fact, the Government has issued order dated 7th September, 1999 in which it is stated that the then Commissioner i.e. said Ashok Lal did not have power to pass any order for revalidating the licence and the order of revalidation is therefore, void ab intio.

3. Mrs. Thadhani, the learned counsel for the petitioner relied on a judgment of this court in writ petition No. 639/1994 alongwith other writ petition, dated 1st September, 2004. In that judgment, the

learned single Judge of this court has set aside the circulars of the Government, which lay down that the application for revalidation made upto a certain date only, will be entertained on the ground that the said circulars were not published in accordance with section 139(2) of the Act. I am of the view that this judgment is of no assistance to the petitioner in this case since the Minister has rejected the petitioner's application for revalidation on the ground that no original document, showing a grant of licence in favour of her husband has been produced by the petitioner. In other words there is no evidence of any licence which could have been revalidated.

4. In the circumstances, I see no error of law apparent from the order of the Minister. The petition is, therefore, liable to be dismissed and the same is hereby dismissed.

5. The dismissal of this petition, shall not prevent the petitioner from making a fresh application for licence to the Collector alongwith all the original documents, as may be necessary. The Collector may consider the same, if made, in accordance with law.

Dt. 05.08.2005 (S.A. BOBDE,J.)

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